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SURGICAL INSTRUMENT SERVICE COMPANY, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SURGICAL INSTRUMENT
SERVICE COMPANY, INC.,

Plaintiff,

vs.

INTUITIVE SURGICAL, INC.,

Defendant.

Case No. 3:21-cv-03496-VC

Honorable Vince Chhabria

**JOINT CASE MANAGEMENT
STATEMENT**

Case Management Conference:

September 28, 2022 at 2:00 p.m.

In accordance with Federal Rule of Civil Procedure 26(f) and Civil Local Rule 16, Plaintiff Surgical Instrument Service Company, Inc (“SIS”) and Defendant Intuitive Surgical, Inc. (“Intuitive”) by and through their respective attorneys of record, hereby submit this Case Management Statement (the “Statement”). The Parties previously submitted their initial Case Management Statement on August 4, 2021 (the “Initial CMC Statement”). ECF No. 36. The Parties now submit this Statement and “report[] progress or changes since the last statement was filed.” Civil L.R. 16-10(d).

I. Jurisdiction and Service

Intuitive filed its Answer on December 14, 2021 and asserted counterclaims against SIS. ECF No. 75.

SIS filed its Answer to Intuitive’s counterclaims on January 10, 2022. ECF No. 76.

No issues exist regarding personal jurisdiction, service, or venue.

II. Motions

Intuitive moved the Court to dismiss the Complaint on August 6, 2021, which was fully briefed. ECF Nos. 37, 38, 51, 57. Intuitive’s “Motion to Dismiss [was] largely denied,” but was granted with respect to SIS’s Lanham Act claim that “Intuitive Surgical misleadingly told customers that...SIS’s services violate Intuitive Surgical’s intellectual property rights.” ECF No. 70 at 9, 12.

The Parties anticipate filing Motions for Summary Judgment, *Daubert* motions, and motions *in limine*.

Plaintiff’s Statement

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Although the Parties are currently working towards resolving certain discovery disputes, SIS anticipates filing motions to compel regarding Intuitive's deficient discovery responses and productions.

Defendant's Statement

Intuitive does not anticipate filing additional discovery motions, though Intuitive will oppose any motion by SIS asserting that Intuitive's written discovery or productions are deficient as any such assertion is meritless.

III. Disclosures

The Parties exchanged initial disclosures on August 26, 2021.

IV. Related Cases

A consolidated class action brought on behalf of Intuitive customers *In re: da Vinci Surgical Robot Antitrust Litigation*, 3:21-cv-03825 (the "Class Action"), is pending before this Court. See ECF No. 19 (order relating cases). There are two actions brought by third parties, *Restore Robotics LLC v. Intuitive Surgical, Inc.*, No. 5:19-cv-55-TKW-MJF, pending before Judge T. Kent Wetherell II in the Northern District of Florida; and *Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW, pending before Judge Virginia Covington in the Middle District of Florida (collectively, the "Florida Litigations")

V. Discovery

a. Discovery Taken to Date

SIS has served three requests for production of documents on Intuitive, one each on December 30, 2021, March 30, 2022 and June 30, 2022. SIS served one set of interrogatories on Intuitive on March 30, 2022. Intuitive has timely responded to

all of SIS's discovery requests. The Parties met and conferred on April 6, 2022; June 3, 2022; and June 9, 2022 regarding Intuitive's discovery responses.

Intuitive has served two requests for documents on SIS, one each on December 29, 2021 and March 30, 2022. Intuitive has served two sets of interrogatories on SIS, one each on March 30, 2022 and July 1, 2022. SIS has timely responded to Intuitive's discovery requests.

The Parties have substantially completed production of responsive, non-privileged documents.

Plaintiff's Statement

Intuitive has largely provided the same documents it provided to the plaintiffs in the Florida Litigations. However, SIS maintains that Intuitive's production is insufficient at least because the production from those cases largely excludes documents prior to 2017, when many of the key technology decisions, product testing, FDA filings, and contractual enforcement policies were made. Intuitive has made a limited production of pre-2017 documents that is limited to a few thousand documents, which simply does not include clearly relevant documents that almost certainly exist.

Defendant's Statement

In response to SIS's first set of documents requests, Intuitive produced to SIS more than 90,000 documents it had produced in the Florida Litigations. In response to SIS's subsequent sets of document requests and in coordination with discovery in the Class Action, Intuitive produced to SIS more than 240,000 additional documents, including documents from ten additional custodians and across an expanded time frame. Intuitive's productions included targeted discovery of pre-2017 materials about topics SIS identifies above. After Intuitive had substantially completed its supplemental custodial collections and one day after the deadline for substantial completion of document discovery, SIS notified Intuitive of its belief that Intuitive's

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productions were “deficient.” Intuitive believes that SIS’s unclear demands for additional document discovery are meritless and untimely.

b. Limitations or Modifications of the Discovery Rules

The Parties met and conferred to negotiate a deposition protocol on July 25, 2022; August 24, 2022; and September 2, 2022. On September 13, 2022, the Parties jointly submitted the proposed protocol to this Court for consideration, which the Court granted. ECF Nos. 94, 95.

c. Protective Order/E-Discovery Stipulation

The Parties filed a Stipulated Protective Order, which the Court granted. ECF Nos. 77, 78.

VI. Settlement and ADR

The Parties do not believe additional settlement or ADR efforts would be fruitful at this time.

VII. Scheduling

The Parties jointly moved the Court to modify the case schedule and extend certain deadlines by approximately three months, which the Court granted. ECF Nos. 89, 90. *See also* ECF Nos. 45, 53. The current case schedule is as follows:

Event	Deadline
Joint CMC Statement due	September 21, 2022
Case Management Conference	September 28, 2022
Deadline to complete fact discovery	November 10, 2022
Deadline to serve expert reports on all issues on which a party as the burden of proof	December 1, 2022

Event	Deadline
Deadline to serve opposing expert reports	January 12, 2023
Deadline to serve rebuttal expert reports	February 23, 2023
Deadline to file motions for summary judgement and any <i>Daubert</i> motion(s)	March 23, 2023
Deadline to file opposition to motion for summary judgment and opposition to any <i>Daubert</i> motion(s)	April 20, 2023
Deadline to file reply in support of motion for summary judgment and reply in support of any <i>Daubert</i> motion(s)	May 11, 2023
Hearing on motion(s) for summary judgment and any <i>Daubert</i> motion(s)	June 8, 2023
Joint CMC Statement Due	June 28, 2023
Case Management Conference	July 5, 2023

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Dated: September 21, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2022, I caused a copy of the foregoing **JOINT CASE MANAGEMENT STATEMENT**, to be electronically filed and served electronically via the Court's CM/ECF system, which will send automatically serve notice to all registered counsel of record.

Dated: September 21, 2022

/s/ *Joshua V. Van Hoven*

JOSHUA V. VAN HOVEN

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FILER'S ATTESTATION

I, Joshua Van Hoven, am the ECF User whose ID and password are being used to file this document. In compliance with Civil L.R. 5-1(h)(3), I hereby attest that all counsel listed above have concurred in this filing.

/s/ *Joshua V. Van Hoven*
JOSHUA V. VAN HOVEN

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